

Message Text

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ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 AID-05 CEA-01 CIAE-00 COME-00
EB-08 EA-10 FRB-03 INR-10 NEA-11 NSAE-00 ICA-11
OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01 AGRE-00
OMB-01 SS-15 PA-01 /112 W
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R 262201Z MAY 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 2250
INFO AMEMBASSY LONDON
USMISSION GENEVA

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USOECD

E.O. 11652: N/A
TAGS: EFIN, ETRD, MTN, UK, OECD
SUBJECT: UK TELEVISION SCREEN TIME QUOTAS

REF: (A) STATE 128708, (B) PARIS 15351

1. SUMMARY: MISSION'S VIEW IS THAT RESTRICTION BEING CONTEMPLATED (REF A) WOULD CONTRAVENE UK'S OBLIGATIONS UNDER INVISIBLES CODE, BUT WE CANNOT BE ABSOLUTELY SURE THAT OUR VIEW WOULD BE UPHOLD IN INVISIBLES COMMITTEE (AND IN OECD COUNCIL, WHICH WOULD HAVE TO RENDER AUTHORITATIVE OPINION). ISSUE COULD BE DISCUSSED AT JUNE 28 COMMITTEE MEETING. END SUMMARY.

2. LIMITATIONS ON "EXPORTATION, IMPORTATION, DISTRIBUTION AND USE OF PRINTED FILMS AND OTHER RECORDINGS -- WHATEVER THE MEANS OF REPRODUCTION -- FOR PRIVATE OR CINEMA EXHIBITION OR FOR TELEVISION BROADCASTS" BY A SIGNATORY OF THE OECD CODE OF LIBERALISATION OF
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CURRENT INVISIBLE OPERATIONS (CLCIO) ARE SUBJECT TO THE PROVISIONS OF THE CLCIO. SIGNATORIES ARE REQUIRED TO "GRANT ANY AUTHORISATION REQUIRED" FOR THIS ITEM (LISTED IN ANNEX A TO THE CLCIO AS E/1): (A) EXCEPT TO EXTENT THAT THE "REMARKS" TO THE ITEM LIMIT ITS SCOPE; OR (B) UNLESS THE MEMBER COUNTRY IMPOSING RESTRICTIONS HAD LODGED A RESERVATION AT THE APPRO-

PRIATE TIME (WHICH THE UK HAS NOT DONE). APART FROM ABOVE EXCEPTIONS, THE COUNTRY MAY ONLY IMPOSE RESTRICTIONS BY RECOURSE TO DEROGATION CLAUSES (ARTICLE 7 OF CLCIO), BUT THIS POSSIBILITY SEEMS FORECLOSED WITH RESPECT TO SCREEN QUOTAS AS THEY COULD HARDLY BE SAID TO BE NECESSARY TO PREVENT "SERIOUS ECONOMIC DISTURBANCE" OR SEVERE BALANCE-OF-PAYMENTS PROBLEMS.

3. THUS, ABILITY OF U.K. AUTHORITIES TO WITHHOLD AUTHORIZATION WOULD APPEAR TO DEPEND DECISIVELY AS TO WHETHER "REMARK" TO FILM ITEM REMOVES CONTEMPLATED RESTRICTIONS FROM LIBERALIZATION OBLIGATION. THE REMARK PROVIDES THAT "MEMBERS SHALL GRANT ANY AUTHORISATION REQUIRED FOR TRANSACTIONS WHICH THEY HAD AUTHORIZED ON 1ST JANUARY 1959, IN VIRTUE OF REGULATIONS OR INTERNATIONAL AGREEMENTS IN FORCE ON THAT DATE", AND FURTHER LIMITATIONS TO ITS SCOPE ARE SPELLED OUT IN ANNEX IV TO ANNEX A. GIVEN THAT ORIGINAL RESTRICTIONS WERE IMPOSED BEFORE 1959, WE BELIEVE THAT PROVISIONS OF CLCIO DO NOT PERMIT THEIR INTENSIFICATION BEYOND DEGREE PREVAILING AT TIME OF THEIR ADOPTION IN 1959. HOWEVER, OECD HAS NEVER RESOLVED ISSUE CONCERNING CLAIM BY SOME OECD MEMBERS THAT STANDSTILL PROVISION DOES NOT APPLY TO SCREEN

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QUOTAS.

4. IF THIS STANDSTILL PROVISION WERE HELD NOT TO APPLY, IT CAN BE ARGUED THAT THE POSSIBILITY, PROVIDED BY ANNEX A, OF APPLYING SCREEN QUOTAS DOES NOT EXTEND TO TELEVISION PROGRAMS (PROVISIONS IN ANNEX A REFER ONLY TO "PRINTED FILMS FOR CINEMA EXHIBITION"). OECD SECRETARIAT RECALLS THAT EARLIER DISCUSSIONS PRODUCED CONSENSUS THAT PROVISIONS OF ANNEX IV SHOULD BE INTERPRETED SO AS TO EXCLUDE TELEVISION PROGRAMS, BUT DECIDED TO PERMIT MEMBERS TO LODGE RESERVATION TO FILMS ITEM IF THEIR PRACTICES WOULD CONFLICT WITH NEW INTERPRETATION. U.K. DID NOT DO SO.

5. MISSION'S RECORDS DO NOT REVEAL DETAILS OF EARLIER DISCUSSIONS (1971 AND 1972) OF THIS ISSUE; HOWEVER, WE SURMISE THAT U.K. CONSIDERED ITSELF TO BE PROTECTED BY VIRTUE OF PRIVATE, INDEPENDENT NATURE OF AUTHORITY WHICH ADMINISTERS TELEVISION SCREEN QUOTAS--I.E. HMG
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DOES NOT ITSELF WITHHOLD ANY AUTHORIZATION. WE WOULD CONSIDER SUCH A POSITION AS BEING LEGALLY DUBIOUS, PARTICULARLY GIVEN THE INDIRECT PRESSURE ON IBA REPORTEDLY BEING EXERTED, AND CERTAINLY AT VARIANCE WITH THE SPIRIT OF THE CLCIO.

6. FORTHCOMING MEETING (JUNE 28) OF INVISIBLES COMMITTEE PRESENTS OPPORTUNE OCCASION TO EXPLORE THESE QUESTIONS. COINCIDENTALLY, COMMITTEE IS SCHEDULED AT THIS MEETING TO UNDERTAKE ONE OF ITS PERIODIC EXAMINATIONS OF MEMBER'S RESERVATIONS TO FILMS ITEM ON CLCIO (REF B). UNLESS OTHERWISE INSTRUCTED, U.S. MEMBER OF INVISIBLES COMMITTEE WILL SEEK TO OBTAIN COMMITTEE'S ENDORSEMENT OF OUR OPPOSITION TO CONTEMPLATED RESTRICTIONS ON BASIS OF FOREGOING ARGUMENTS.
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